

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 392 of 2024

Appellant : Muhammad Naeem alias PTV through
Mr. Mushtaq Ahmed, Advocate.

Complainant : Muhammad Fazal through Mr. Muhammad
Khalid Akhtar, Advocate.

Respondent : The State, through Mr. Mohammad Mohsin
Mangi, Addl. P.G.

Date of Hearing : 14.10.2025.

Date of Judgment : 03.12.2025

J U D G M E N T

TASNEEM SULTANA, J.:- This criminal appeal is directed against the judgment dated 20.05.2024, delivered by the learned IVth Additional Sessions Judge, Karachi East in Criminal Complaint No. 107/2016, whereby the appellant was convicted under Section 3 of the Illegal Dispossession Act, 2005, and sentenced to seven (07) years' rigorous imprisonment, with a fine of Rs.100,000/- and compensation of Rs.300,000/- under Section 544-A Cr.P.C.

2. Brief facts of the complainant's case, narrated by him in his complaint, are that he is owner of Plot No. R-131, Sector 48-B, Korangi, Karachi, measuring 120 square yards (hereinafter "the subject property"), allegedly purchased from Muhammad Masood Ali Shah, and that he constructed a house on the property and rented it to Mst. Sarwar Jahan Siddiqui on 20.02.2016. It is alleged in the complaint that appellant Muhammad Naeem alias PTV approached the tenant, offered her Rs.300,000/- to vacate, and upon her refusal, forcibly entered the property on 12.04.2016 with two associates, assaulted the tenant, and dispossessed her. The complainant claims to have approached the police, after which the tenant was re-admitted into possession, but the appellant allegedly re-entered the premises on 01.05.2016. The police then sealed the premises on 13.05.2016, but according to the complainant, the appellant again broke the locks and occupied the property. The complainant states that, upon police advise, he ultimately approached the Court. An application before the XVI Judicial Magistrate was dismissed on 16.08.2016, with direction to seek remedy before the proper forum. Hence he filed complaint under Section 3 of Illegal

Dispossession Act, 2005

3. Investigation was assigned to the SHO P.S. Zaman Town and conducted by ASI Syed Gohar Abbas, culminating in a report on which cognizance was taken. The appellant remained absent, leading to issuance of warrants and proclamations under Sections 87 & 88 Cr.P.C., until he later appeared and successfully moved for recall of warrants under Section 75(ii) Cr.P.C. on 18.01.2020.

4. After supply of documents, formal charge was framed on 07.03.2020, to which the appellant pleaded not guilty.

5. To prove charge, the prosecution examined PW-1 Salman Siddiqui (Assistant Director KDA) at Exh-04, who produced KDA's record at Exh-05, PW-2 Muhammad Fazal (Complainant) at Exh-06, producing various documents (Exh-07 to Exh-11), PW-3 Hanif Khan at Exh-12, whose prior statement was exhibited at Exh-13 and PW-4 ASI Syed Gohar Abbas (Inquiry Officer) at Exh-14, who produced verification report, inquiry report, and a death certificate (Exh-15 to Exh-17). Thereafter prosecution closed its evidence vide statement at Exh-18.

6. The statement under Section 342 Cr.P.C. of appellant was recorded at (Exh-19), in which he claimed lawful ownership over subject property, having purchased from the leaseholder Mst. Riasat-un-Nisa. He alleged fabrication in the inquiry report and professed innocence. He declined to testify under oath but examined one defence witness, Muhammad Sadiq (Exh-20), then closed his side (Exh-21). The Trial Court also examined the Sub-Registrar (Central Record), Mohsin Ali, as Court Witness (Exh-22), who produced his report (Exh-23).

7. After hearing both sides, the learned trial Court convicted the appellant. The same is impugned through this appeal.

8. Learned counsel for the appellant argued the prosecution did not prove its case beyond reasonable doubt; there exist material contradictions and discrepancies in the prosecution evidence; that complainant failed to establish exclusive ownership or possession; that appellant holds an independent claim to the property through purchase from the leaseholder; that the trial court relied on inadmissible and unreliable documents; defence evidence was disregarded without justification; essential ingredients of Section 3 of the Illegal Dispossession Act, 2005, were not satisfied, therefore, conviction and

sentence recorded by the trial court is not sustainable in the eyes of law and liable to be set aside.

9. Conversely, learned Addl. P.G duly assisted by learned counsel for the complainant supported the impugned judgment and contended that the claim of complainant was fully supported by documentary evidence and prosecution had successfully established its case beyond reasonable doubt therefore, impugned judgment based on cogent reasons does not call for interference by this Court.

10. Heard. Record perused.

11. It is the case of complainant that he had rented out house to Mst.Sarwar Jahan Siddiqui on 20-02-2016 whom appellant Muhammad Naeem approached and offered Rs. 300,000 to vacate in his favour but she refused. Thereafter, on 12-04-2016 appellant Muhammad Naeem and his two companions allegedly entered into subject property at night, beat his tenant and forcibly dispossessed her. On complaint to police accused escaped and the tenant was re-entered in the said house. The appellant allegedly again took over the property on 01-05-2016, leading the police to seal it on 13-05-2016, but he allegedly broke the locks and re-occupied it, prompting further complaints.

12. A meticulous appraisal of the evidence available on record reveals that PW-Muhammad Fazal, the complainant, was examined at (Exh-06) wherein he categorically deposed that he was owner of the subject property which was purchased by him ten years ago. On the day of incident he went at his property for construction where accused alongwith 20 persons including women came over there and demolished the walls, doors, windows and maltreated the labors. He immediately called police and sent applications to Governor House etc. He further deposed that he stopped the construction and put his lock thereon till resolution of issue. He further deposed that after 8 to 10 days police handed over the possession of the property to accused persons. PW Hanif Khan examined at (Exh-12) narrated same version stating that at the time of occurrence, complainant was undertaking construction. However, he did not mention anything about tenant being dispossessed. **PW Salman Siddique** examined at **(Exh-04)**, the Assistant Director KDA, merely produced a report based on KDA computer records without any independent verification. He admitted that he did not personally

inspect the property or verify the authenticity of the transfers. His evidence, therefore, has limited probative value, particularly when contradicted by the Sub-Registrar's official record. Significantly, during trial, the Sub-Registrar explicitly disclaimed jurisdiction and recommended verification from the Sub-Registrar Korangi Town. This recommendation was never acted upon by the prosecution or the trial court. This failure to obtain verification from the proper authority is a serious lacuna in the prosecution case.

13. Minute scrutiny of prosecution evidence brought on record, reflects that there material contradictions and inconsistencies between the statements of prosecution witnesses given by them at different stages. The complainant alleged in his complaint (Exh-7) that the property was rented out to Mst. Sarwar Jahan Siddiqui and that she was forcibly dispossessed by the appellant on 12.04.2016. However, when the complainant himself was examined at Exh-06, he gave an entirely different version. He deposed that he personally went to the property for construction work when the appellant, along with 20 persons including women, came and demolished walls, doors, and windows, and maltreated his laborers. There is no mention whatsoever of any tenant or her dispossession in his testimony. Similarly, PW Hanif Khan (Exh-12) corroborated the construction version, stating that the property belonged to the complainant who was undertaking construction when disturbance occurred. His testimony makes no reference to any tenant being dispossessed. This is not a minor discrepancy but a fundamental contradiction going to the very root of the case. The prosecution cannot maintain two mutually exclusive versions one that a tenant was dispossessed and another that the complainant himself was engaged in construction activity. The complainant has failed to maintain consistency on the most basic question: who was actually in possession when the alleged dispossession occurred? Such material contradictions between the complaint and the testimony of prosecution witnesses, including the complainant himself, render the entire prosecution story highly doubtful and unworthy of credence.

14. From perusal of record, it appears that in the complaint under Section 3 of Illegal Dispossession Act, 2005 filed by complainant, it is alleged that tenant Mst. Sarwar Jahan Siddiqui was forcibly dispossessed from the subject property, yet she was never produced or examined at

any stage of the trial. She is the person who allegedly suffered the dispossession, yet the prosecution chose not to examine this most material witness. No explanation has been offered for this critical omission. The non-production of such a vital witness draws an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984, which provides that the Court may presume that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it. In the absence of the alleged victim's testimony, the prosecution has failed to prove the essential element of forceful dispossession. This alone is sufficient to create reasonable doubt entitling the appellant to acquittal. Reliance is placed on the case of **Lal Khan v. State' (2006 SCMR 1846)** wherein it is held that:

“The prosecution is certainly not required to produce a number of witnesses as the quality and not the quantity of the evidence is the rule but non-production of most natural and material witnesses of occurrence, would strongly lead to an inference of prosecutorial misconduct which would not only be considered a source of undue advantage for possession but also an act of suppression of material facts causing prejudice to the accused. The act of withholding of most natural and a material witness of the occurrence would create an impression that the witness if would have been brought into witness-box, he might not have supported the prosecution and in such eventuality the prosecution must not be in a position to avoid the consequence.”

15. The prosecution has relied upon two contradictory documents regarding the ownership chain of the property. **Document No. 1 - KDA Report (Exh-05)**, shows the chain of title viz. Original allottee: Mst. Qamar Ara Begum followed by multiple transfers in favour of Mst. Riasat-Un-Nisa on 04.10.1980; Abdul Saeed on 23.01.1995; Syed Masood Ali Shah on 08.06.1999 and lastly Muhammad Fazal (complainant) on 20.02.2016. **Document No. 2 - Sub-Registrar's Report (Exh-23)** shows the Lease registered in favor of Raees-un-Nisa by Azhar Alam on 09.10.1980 and no subsequent transfers recorded after 1980. The discrepancy in names "Riasat-Un-Nisa" in the KDA record versus "Raees-un-Nisa" in the Sub-Registrar's record remains unclear whether these refer to the same person or different persons. The Sub-Registrar clarified that verification should be sought from Sub-Registrar Korangi Town, yet it was never done. No registered sale deed was produced. Thus ownership claim, unsupported by any valid document, cannot establish lawful ownership or possession. Complainant claimed in his complaint that his tenant was disposed but in his evidence he deposed 20 persons including women came and

demolished his walls, doors and windows when he immediately called police and stopped the construction and kept house locked till resolution of issue. He also deposed that after 8/10 days police handed over the possession of the property to accused persons. creating doubt about whether the complainant ever lawfully acquired the property at all. Without establishing ownership, lawful possession cannot be proved. On all these aspects, the original status of ownership and chain of transfers of record of rights of subject property can not be resolved unless evidence of all concerned is recorded which can not be undertaken by this Court in the instant appeal.

16. The Illegal Dispossession Act, 2005, provides legal remedies for individuals who have been unlawfully dispossessed of their property. The Act underscores that all dispossessions must be carried out strictly in accordance with the law, thereby ensuring the protection of property rights and adherence to due process. To sustain a conviction and sentence under Section 3 of Illegal Dispossession Act, 2005, the prosecution must satisfy the ingredients of said provision which include i. **Lawful possession** of complainant or tenant; ii. **Forceful dispossession** by the accused; **Continuing illegal occupation** by accused. In the present case, as stated above, prosecution has failed to prove ownership right of complainant over subject property on the basis of valid record of rights; prosecution failed to establish as to who was in possession at the time of alleged dispossession and illegal occupation of subject property and whether it was forceful dispossession or otherwise. On all these scores, ingredients of Section 3 of illegal Dispossession Act, 2005 were not satisfied.

17. The purpose of the Illegal Dispossession Act is to provide swift relief to truly aggrieved persons. However, this protection should not be extended to those who seek to misuse the law for ulterior motives or to settle personal scores in genuine disputes where both parties assert title on the basis of competing documents. It is therefore the Court's duty to examine the complaint thoroughly and judiciously, considering the reports of the relevant authorities rather than proceeding mechanically. Any departure from this approach can lead to a miscarriage of justice, particularly where the underlying dispute is civil in nature. Reliance is placed in the case of **Nadeem Waqar Khan Vs Javed Masood Ahmed Khan (P L D 2020 Sindh 8)**, it has been held that:

“4. There is no cavil to the proposition that complaint under the

Illegal Dispossession Act 2005 is maintainable against any person who forcibly dispossesses the occupier or owner but such remedy is never meant to settle civil dispute or a substitute for civil suit.”

Similarly in the case of **Zahoor Ahmed and 5 others v. The State and 3 others** (PLD 2007 Lahore 231), it was held:

"The Illegal Dispossession Act, 2005 does not apply to run-of-the-mill cases of alleged dispossession from immovable properties by ordinary persons having no credentials or antecedents of being property grabbers/Qabza Groups/land mafia, i.e., cases of disputes over possession of immovable properties between co-owners or co-sharers, between landlords and tenants, between persons vying for possession on the basis of competing title documents, contractual agreements or revenue record or cases with a background of an on-going private dispute over the relevant property."

18. After thorough examination of the evidence and circumstances of this case, as discussed above, I have found that the prosecution case suffers from grave and material contradictions, dishonest improvements, conflicting versions given in complaint and evidence recorded at the trial, non-production of key witness (tenant), unresolved documentary conflicts, and failure to prove essential ingredients of the alleged offence. Cumulatively, they render the prosecution case wholly unreliable and unworthy of credence. The learned trial court erred in convicting the appellant despite these glaring infirmities in the prosecution case. The benefit of doubt must be resolved in favor of the appellant as a matter of right. The prosecution having failed to discharge its burden of proving guilt beyond reasonable doubt, the appellant is entitled to benefit of doubt.

19. As regards the two conflicting statements of complainant with regard to same occurrence, one given in his complaint and other in his evidence adduced at the trial, the reliance is placed in the case of **Nadeem and others v. The State and others (2014 P.Cr.L.J 374)** wherein it has been held;-

“Thus it is clear from the above that there are two versions made by the P.Ws. themselves and both these versions are self-contradictory. Obviously two contradictory statements about the same occurrence cannot be considered truthful. Therefore, a genuine doubt has arisen about these P.Ws., who blew hot and cold in the same breath and showed least respect for telling the truth and, by being capable of changing their versions as and when it suited them, proved that they are worthy of no credence even if they are natural witnesses of the occurrence. If a witness deposes falsely under threat and that too on oath inside a court, on one occasion, how can he or she be relied upon and believed as truthful on another occasion. This mercurial behavior reflected

from their conflicting depositions lends, in a way, support to the defence plea that Inayat complainant and Mst. Fouzia who had been residing at Agriculture Farm of Arif Badrana for the last so many years had implicated all the accused at his instance."

Similarly, reliance is placed in the case **Muhammad Arif Vs. The State (2019 SCMR 631)**, wherein the Hon'ble Supreme Court observed as under:

"It is well established by now that when a witness improves his statement and moment it is observed that the said improvement was made dishonestly to strengthen the prosecution, such portion of his statement is to be discarded out of consideration. Having observed the improvements in the statements of both the witnesses of ocular account, we hold that it is not safe to rely on their testimony to maintain conviction and sentence of Muhammad Arif (appellant) on a capital charge."

20. It is settled principle of law that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance is placed on the cases reported as **Ghulam Qadir and 2 others v. The State (2008 SCMR 1221)**, **Muhammad Akram v. The State (2009 SCMR 230)** and **Muhammad Zaman v. The State (2014 SCMR 749)**.

20. For the reasons recorded hereinabove, this appeal is **allowed**. The conviction and sentence awarded to the appellant under impugned judgment dated 20.05.2024 passed by the learned Trial Court/ IVth Additional Sessions Judge, Karachi East in Criminal Complaint No.107/2016 is **set aside**. The appellant Muhammad Naeem alias PTV is **acquitted** of the charge under Section 3 of the Illegal Dispossession Act, 2005 and is ordered to be released forthwith if not required in any other case.

JUDGE